

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA**

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

MFA.No. 1055 of 1995()

OS.148/1994 of FAMILY COURT,THRISSUR

.....

APPELLANT: PLAINTIFF

**AMMINI, W/O. KAKKANAT NARAYANAN,
RESIDING AT VALLACHIRA DESOM &
VILLAGE, THRISSUR TALUK.**

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS: DEFENDANTS

- 1. NARAYANAN, S/O. KAKKANAT KRISHNAN,
VALLACHIRA DESOM AND VILLAGE,
THRISSUR TALUK.**
- 2. ITTIACHAN, S/O. KURUTHUKULANGARA JOSEPH,
RESIDING AT AYYANTHOLE,
THRISSUR DIST. (DIED)**

*** ADDL. RESPONDENTS 3 TO 11 IMPEADED.**

- 3. MARTHA , W/O. LATE ITTIACHAN,
KUNOTHUKULANGARA HOUSE,
AYYANTHOLE , THRISSUR 3.**
- 4. MEGGY, D/O. DO- -DO-**
- 5. GEORGE, S/O. DO. DO. (DIED)**
- 6. ANTONY, S/O DO. DO.**
- 7. DOMINIC , S/O. DO. DO.**

MF.A. NO.1055/1995.

- 8. JESSY, D/O. DO. DO.**
- 9. SABURAJ, S/O. DO. DO.**
- 10. JAMES, S/O. DO. DO.**
- 11. JENNY, S/O. DO. DO.**

ADDL. RESPONDENTS 3 TO 11 ARE IMPEADED AS LEGAL REPRESENTATION OF THE DECEASED 2ND RESPONDENT AS PER ORDER DT. 4.4.05 ON CMP. 4866/02.

ADDL.R12 TO 15 IMPEADED

- 12. POULINE, W/O. LATE GEORGE ,
AGED 43 YEARS, PHARMACIST,
RESIDING AT ESI, QUARTERS,
CHERUVANNUR, KOZHIKODE.**
- 13. SISIRAN, MINOR 15 YEARS, D/O. LATE
GEORGE, RESIDING WITH HER MOTHER AND GUARDIAN,
POULINE PHARMACIST, RESIDING AT ESI QUARTERS,
CHERUVANNUR, KOZHIKODE.**
- 14. HARITHA, MINOR AGED 11 YEARS,
D/O. LATE GEORGE, DO. DO.**
- 15. HEMANTH, MINOR, AGED 6 YEARS,
S/O. LATE GEORGE DO. DO.**

ADDL. RESPONDENTS R12 TO R15 IMPEADED AS PER ORDER DT. 15.9.06 IN IA. 1695/2006.

AS PER ORDER DT. 15.9.06 IN IA.12696/06 R12 THE MOTHER IS APPOINTED AS THE GUARDIAN OF THE MINOR RESPONDENTS R13 TO R15.

**BY ADV. SRI.A.P.CHANDRASEKHARAN
SRI.LIGEY EMMANUEL
SRI.T.R.RAVI
SMT.PRABHA R.MENON**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

ORDER ON CMP. NO/3698/1995 IN MFA. 1055/1995

DISMISSED

10.09.2007

SD/- J.B.KOSHY, JUDGE

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1055 OF 1995

Dated 10th September, 2007

JUDGMENT

Koshy,J.

First respondent married the appellant and they were residing together in the house comprised in Survey No.164/1 of Urakam Village. According to the appellant, her husband was a drunkard and constantly he was harassing her and when the children became major only she was able to make any resistance. It is her contention that the first respondent made an agreement with the second respondent (after his death legal representatives were impleaded) for sale of the above property and a suit for specific performance was filed as O.S.No.687 of 1980 and in execution of the decree, the sale deed was also executed. The agreement was executed on 12.12.1980. The suit was also filed in the year 1980. Later, when the execution proceedings were started in the year 1991, after 10 years of the alleged agreement and after 10 years of the decree, the appellant approached the court by filing O.S.No.148 of 1994 for maintenance and also for an injunction from evicting them. That was dismissed by the Family Court on the ground that the same was filed collusively between the appellant and husband so that they can continue with the property. Their marriage is still subsisting. The first

defendant, her husband, did not contest the case. The second defendant gave oral evidence. After considering the evidence, the Family Court found that the suit was filed in a collusive manner. In fact, original suit for specific performance was not contested and finally execution petition was filed and sale deed was also executed. This is only a last attempt to stay in the house. Therefore, the prayer in the suit for restraining the second defendant from evicting the appellant/plaintiff was correctly rejected and we are not interfering with the same. Sale of the property in question is in no way affected by the collusive suit. It is her contention that she resisted the husband's cruelty only when the children became major. So, it is for the children to give appropriate residence to the appellant.

2. There was prayer for granting maintenance. Since the suit was not contested by the first defendant, we are of the opinion that maintenance ought to have been granted and it is for the appellant to execute the same against her husband. Only Rs.500/= was requested as maintenance. The suit was filed in 1994. In the above circumstances, we order that the husband is bound to give

maintenance at the rate of Rs.250/= per month for 10 years from the date of filing the suit and thereafter Rs.500/= per month.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

tk